

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

Estate of Ryan Rodriguez,	:
Joe Rodriguez and	:
Carol Rodriguez,	:
Co-Administrators,	:
	:
Plaintiff,	:
	:
v.	: File No. 2:06 CV 125
	:
Jay Simon,	:
Correctional Medical	:
Services, Inc.,	:
Edward Dionne,	:
Joshua Rutherford,	:
Michael Carbonneau, and	:
John Arzuaga,	:
	:
Defendants.	:

ORDER

The Report and Recommendation of the United States Magistrate Judge was filed April 3, 2006. Defendants' objections were filed April 13, 2007.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

After careful review of the file, the Magistrate Judge's

Report and Recommendation and the objections, this Court ADOPTS the Magistrate Judge's recommendations in full.

Defendants object to the Magistrate Judge's analysis of "clearly established" constitutional rights, arguing that such a right must be based upon an analogous fact pattern in case law. The Court finds the Magistrate Judge's opinion thorough and well reasoned and adopts it in full. The parties will have the opportunity to review the qualified immunity issue at the close of discovery at the summary judgment stage of the proceedings.

The defendants' motion to dismiss (Papers 14 and 31) is **DENIED.**

Dated at Burlington, in the District of Vermont, this 19th day of July, 2007.

/s/ William K. Sessions III  
William K. Sessions III  
Chief Judge